

## EPA Official Record

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**From:** John Lovell/R3/USEPA/US

**To:** Michelle Price-Fay/R3/USEPA/US@EPA

**Delivered Date:** 05/09/2011 10:47 AM EDT

**Subject:** Fw: Consent Order and Agreement

I received this e-mail from the City of Reading. They are trying to establish an enforceable schedule through a consent agreement with one of their violating industries, but the industry has made some comments on the consent agreement that they are uncomfortable with and asked for our thoughts. I'm going to give them my comments, but was hoping to get someone with more enforcement experience to take a look at it.

Thanks.

John Lovell  
Pretreatment Coordinator  
EPA Region 3  
1650 Arch Street  
Philadelphia, PA 19103-2029  
215-814-5790  
215-814-2318 (fax - NEW)

----- Forwarded by John Lovell/R3/USEPA/US on 05/09/2011 10:45 AM -----

From: <deborah.hoag@readingpa.org>  
To: John Lovell/R3/USEPA/US@EPA  
Cc: <jackie.hendricks@readingpa.org>  
Date: 05/06/2011 02:59 PM  
Subject: Consent Order and Agreement

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John,

Previously, we had discussed two food industries that were going through the formal planning process in the host municipality prior to the installation of industrial pretreatment systems. Since one had previously had a Consent Order and Agreement (COA) with the City and continues to be in SNC for the same issues, we were not inclined to offer any benefits normally afforded an industry with compliance issues being addressed.

However, with the other industry who is not in SNC we discussed the COA concept and they wanted to wait until they were at a point where they felt they had more control over the timing. Now that they have the

municipal zoning and planning issues addressed and have all the municipal approvals in place, we issued a COA based on the schedule they had provided which we felt was reasonable. We have now received from them a redlined or track changes version that seems to have completely lost the intent of achieving compliance with an enforceable compliance schedule. We are not inclined to agree to the bulk of the changes as we don't think it would still meet your intent. I have attached the original we sent and what we received for your cursory review. Below are the key comments from Jackie's email following her side-by-side review of the documents.

I just finished my notes on the DFA revision to the COA. These are just my major concerns in the revisions.

- Use of the term alleges in various statements
- Use of "is scheduled" which replaces "will be completed" on points 6 through 10
- Multiple changes to the intent of the fine schedule in point 14
- Use of "may" in the imposition of penalties in point 14 and 15
- The force majeure which is actually covered in point 22

As we discussed, this no longer is a Consent Order with an enforceable compliance schedule. These points cannot be changed.

Please let me know if you have difficulty opening what they sent to us. We would like your opinion on the original and changes as proposed. Thanks.

Deb

Deborah A. S. Hoag, P.E.  
Utilities Division Manager  
City of Reading  
815 Washington Street  
Reading, PA 19601-3690  
Phone: 610-655-6258  
Fax: 610-655-6034  
EEmail: [Deborah.Hoag@readingpa.org](mailto:Deborah.Hoag@readingpa.org)



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Consent Agreement between City of Reading DFA (Legal